The permission granted under Section 12 by a Board to a landlord is not, on the one hand, a meaningless formality nor is it, going to the other extreme, an Order conditional or otherwise for ejectment.

The object of prohibiting a landlord from applying for ejectment until and unless he has obtained a Board's permission must surely be to prevent frivolous and unnecessary applications to the Courts. Therefore, in considering a landlord's application, it seems to me that a Board should be guided by the following principles.

Firstly, the Board should bear in mind that it is not trying the case itself, but merely deciding whether to give or withhold permission for a landlord to apply to a Court for ejectment.

Secondly, the Board is not making any order. It merely records a decision to give or not to give permission.

This means that, bearing in mind and applying the provisions of Section 13, the Board should limit its consideration of the application to deciding, after it has heard evidence by both parties, whether the landlord has made out a *prima facie* case with which to go to a Court. In other words, the Board must consider whether the landlord has made out a case which has a reasonable chance of success before a Court. If, in the Board's opinion he has, then permission and nothing else should be granted. On the other hand if, in the Board's opinion no such case has been established permission should be refused.

In the present case the first part of the Board's Order that the premises were to be vacated by 30th June, 1950, is clearly *ultra vires*. Neither Ordinance No. 6 of 1948, nor its amending Ordinance No. 61 of 1949, anywhere gives the Board power to order ejectment or give possession. In this connection, as pointed out above, the powers of the Board are defined and confined by Section 12 to giving permission to a landlord to apply to any Court for an order for ejectment.

Nor does it appear to me that the Board has any authority beyond the mere giving or withholding of such permission. In my view no conditions whatever can be attached to any permission given by the Board to a landlord such as was done in the case under review.

I consider, too, that only in very exceptional cases should a Board express an opinion as was done in this case. Such an opinion, amounting practically to a finding of fact, is one more properly to be formed by the Court.

It follows, therefore, from the opinions I have expressed that I consider that the Board was correct from the evidence it heard in giving the landlord/respondent permission to apply to a Court, which is the real purport of the Order appealed against, as he had made out a *prima facie* case.

The appeal is accordingly dismissed, with costs.

*Appeal dismissed.*

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## *IN RE* CH'NG TIAM SWEE, DECEASED.

[Orig. Civ. Juris. (Taylor, J.) March 17, 1950]

[Selangor — L.A. Petition No. 307 of 1949]

*Administration of Small Estates Ordinance, 1949 — Jurisdiction of Registrar to determine petitions for Letters of Administration — Probate and Administration Enactment (Cap. 8).*

Section 178 of the Probate and Administration Enactment gave the Collector of Land Revenue exclusive jurisdiction over "small estates", which are defined as estates including some immoveable property and not exceeding $3,000.00 in total value. On the 31st December, 1949, this limit was raised to $5,000.00 by the Administration of Small Estates Ordinance, 1949. The question in this case was whether the Registrar had jurisdiction to determine the petition for letters of administration. The deceased died on the 10th May, 1949, and on the 16th December, 1949, his eldest son filed a petition for letters of administration in which the net value of the estate was sworn at a little more than $3,000.00.

**Held,** (1) that the jurisdiction of the Registrars to determine petitions for letters of administration of estates between $3,000.00 and $5,000.00 in value, is not taken away by the Administration of Small Estates Ordinance, 1949, as regards petitions pending when the amendment came into operation and that such jurisdiction is determined by the value of the estate as at the date on which the petition or application is filed.

**Semble:** A petitioner may, if he wishes, with the leave of the Court, withdraw such a petition in order to make an application to the Collector for distribution.

*Cases referred to:—*

(1) *Re Athlumney* (1898) 2 Q.B. 551.

(2) *Pinhorn v. Sonster* (1852) 8 Exch. 138.

PETITION for Letters of Administration.

*T. V. A. Brodie* (Senior Fed. Counsel) for Attorney-General as *amicus curiae.*

*Ng Kok Thoy* for petitioner.

The facts and argument sufficiently appear from the Judgment.

*Cur. Adv. Vult.*

**Taylor, J.** : — Ch'ng Tiam Swee died intestate at Pulau Ketam, Selangor, on 10th May, 1949, leaving three lots of Mukim Register land.

On 16th December, 1949, his eldest son filed in the High Court at Kuala Lumpur a petition for letters of administration in which the net value of the estate was sworn at a little more than $3,000.

By section 178 of the Probate and Administration Enactment, Cap. 8, the Collector of Land Revenue has exclusive jurisdiction over "small estates", which are defined as estates including some immovable property and not exceeding $3,000 in total value.

On 31st December, 1949 this limit was raised to $5,000 by the Administration of Small Estates Ordinance, 1949.

On 5th January, 1950 the petition came before the Senior Assistant Registrar who held that the estate was then a "small estate". As the amending Ordinance contains no saving clause regarding pending applications he doubted whether the Court could deal with the petition and adjourned the matter. Later, he formally referred the question to a Judge for a decision, and as several cases involving a similar question had arisen, the Chief Justice invited the Attorney-General to take part in the argument.

When the matter came before me on 25th February Mr. Brodie, Federal Counsel, who appeared on behalf of the Attorney-General expressed doubt as to whether an *amicus curiae* can be heard in chambers but I am able to assure him, from my own experience, that there is ample local precedent for this.

I will deal first with a preliminary point which was not argued. The definition of "small estate" in section 177 of Cap. 8 in the Revised Edition runs: — ".....an intestate consisting....of immovable property", the word "estate" which appeared after "intestate", in the original Enactment of 1926, being omitted.

An intestate cannot consist of land. If the present statute is construed literally, the definition is incapable of any meaning and the whole chapter is abolished. It is matter for comment that, although the section has been amended on three separate occasions, this omission has not been repaired.

In a statute to which the rules of strict construction apply, omitted words cannot be supplied and, in strictness, one cannot prefer the original because the revised edition is, by express enactment, the sole authentic text. However, I am of opinion that this Chapter is susceptible of beneficial construction and since the omission of the word "estate" would make the whole chapter inoperative if the definition were literally construed, I think the Court will supply the missing word from the original statute.

I now pass on to the principal arguments addressed to me on the question reserved by the Registrar.

Mr. Ng Kok Thoy for the petitioner, submitted that the provisions of the Courts Ordinance, 1949 prevail over those of the Probate Enactment by virtue of section 109 of the former.

In my view this section does not apply because there is no inconsistency or conflict. The jurisdiction of the Collector is very artificially circumscribed. It is exclusive but it is limited to estates which are not merely small in value but are intestate and also include land. If the deceased leaves a will or if he leaves movables only, the Court has exclusive jurisdiction, no matter how small the estate (though it might happen that if a will were held to be invalid an entirely new proceeding before the Collector would become necessary).

Counsel argued that there are two parallel jurisdictions and that the petitioner can choose his forum. This is not correct.

There are two separate jurisdictions for different classes of estates of small value — with a highly technical and artificial line, but nevertheless a clearly marked line, between them. There is no overlap.

Mr. Kok Thoy also submitted that the question here is one of jurisdiction and rights, not of procedure, and that the amendment is therefore not retrospective. He referred to *Maxwell* (IX edition) at page 221 and to *Re Athlumney*[1] and some of the other cases there cited.

Mr. Brodie did not support the view that there is parallel jurisdiction so that a petitioner can choose but he argued that the Courts Ordinance expressly gives jurisdiction to the Registrars to hear applications, meaning valid applications, and that section 178 of the Probate Enactment does not take away the jurisdiction to determine petitions which were valid when they were made; the grant of Letters of Administration was in strictness due before the amendment and the petitioner is not affected by delay in the Court, *Pinhorn v. Sonster*[2]. He referred to the Interpretation Ordinance, Section 13, and said that up to 31st December, 1949 the petitioner had a right to obtain a grant of Letters of Administration from the Court; that on the following day this right was abolished, and a right to apply to the Collector for distribution substituted; that this shewed that, in effect, section 178 was repealed and re-enacted with the amended definition of "small estate" incorporated in it; that in principle the whole of Chapter XIX was repealed and re-enacted (because the definition runs through every provision) so that for purposes of construction the position was comparable to that in 1927 when the Chapter first

came into operation; that on that date there must have been pending applications and even in its original form (E. 5 of 1926) there was no saving provision; that none was necessary because the chapter was expressed to be prospective — "Applications shall be made and dealt with . . . . . ." "The Collector shall have . . . ." "The proceedings shall be . . . ." and so on, sections 178, 180 to 183, etc; that the chapter has no retrospective application except in one particular respect where it is enacted in express words (Section 179) that the chapter applies to the estates of person who died before the Enactment (but in respect of which applications had not yet been filed).

The general object of the legislation, he said, was to shorten and simplify proceedings; it would be contrary to that intention to require parties to a pending petition to begin afresh in a different jurisdiction.

Values fluctuate. Suppose that, a year ago, a similar petition had been filed but between the date of filing and the date of hearing, a slump or a fire had reduced the value of the estate below $3,000. Would the Registrar have doubted his jurisdiction to continue? In principle what is the difference between that case and the present one?

If pending petitions must be transferred to the Collector they must be transferred at whatever stage they have reached. This would cause hardship and even confusion where a contentious matter was part heard.

In general, statutes are not retrospective as to rights, though they are as to procedure. This instance may involve procedure but the actual question is one of jurisdiction and it clearly affects rights — the right to Letters of Administration as distinct from distribution and the right of appeal.

On this last point I doubt whether the argument is consistent; it is true that under Section 189 (ii) the right of appeal is somewhat restricted, but is there any appeal at all from the decision of a Registrar under the Rules of Court relating to determination of administration petitions?

Mr. Brodie went on to argue that in all the reported cases the Court looked at the particular provisions of the statute concerned and at the circumstances in which the question arose. The canons of construction are only to resolve doubts or ambiguities. If the statute itself provides an answer consistent with its general tenor there is no need to have recourse to anything else. Section 178, on which the whole question turns, is prospective.

In my opinion section 177, when construed in the light of its context, is decisive of the question propounded. A "small estate" is defined as an intestate estate, including land, not exceeding $5,000 gross "at the date of the application for distribution or administration". This fixes the date at which the estate is to be valued for the purpose of determining the jurisdiction.

In a different case I have already ruled (the point being in that case vital) that the date in question is the date on which the application is filed, not the date on which it was sworn or signed by the applicant.

The words "application for distribution or administration" require special exposition. It is true that the Collector can grant letters of administration but the whole policy of the chapter is to lead to immediate distribution, disposing of the whole matter at one hearing, as opposed to the ordinary Court procedure of an application for administration followed at a later date by an application to approve distribution. In a distribution case a party may apply orally at the hearing for letters of administration but the definition clearly refers not to anything of that nature but to the written application and the prescribed forms make it clear that this application must be for distribution, whatever the wish of the applicant may be. The expression quoted is an ellipsis and really means: — "at the date of filing the petition to the Court for administration or the application to the Collector for distribution, as the case may be".

I therefore rule on the reference that the Registrar still has jurisdiction to determine this pending petition.

My decision might have been stronger, as an authority, if anyone had actively supported the Registrar's view but on the other hand Mr. Brodie was not a partisan; he was putting forward an independent opinion and the Court is grateful for his carefully prepared argument.

In conclusion, it may be desirable to mention here one or two other points which arise from examination of the Chapter, though they were not argued.

Where the jurisdiction depends on value, the correct way to resolve any doubt or to deal with a border-line case is as follows:—

If a petition is filed in Court the Registrar examines it and if it is, on its face, in order and the estate is sworn at upwards of $5,000 and the Registrar accepts that as sufficient evidence of value, then the jurisdiction is determined and the matter proceeds in Court.

If the Registrar doubts the accuracy of the valuation he should refer the matter to the Collector who

will then make his own estimate of the value as at the date of filing the petition. If the Collector values the estate, as at that date, at $5,000 or under, then the estate was a small estate, and the Court had no jurisdiction. The petitioner would be advised to apply to the Collector for distribution.

Conversely, where an application is filed in a Land Office, the Collector determines the value of the whole of the estate, not merely of the land, as at the date of filing and if he finds it to exceed $5,000 he rejects the application and refers the applicant to the Court.

The valuation by the Collector is, for the purpose of jurisdiction, conclusive, section 183.

It is true that if, in such a case as that last mentioned, the petitioner waited for a long time before filing his petition and meantime the value of the property fell, the Registrar might rule that the estate had become "small" and send the applicant back to the Collector but this would very rarely occur. The valuation is made for a special purpose and need not closely follow the fluctuations of markets. The valuation must stand for a reasonable time and provided that the applicant acts within that time there will be no difficulty. If an applicant delays the matter unreasonably he must take the consequences.

There is, however, one situation where the applicant may have a choice of forum. If, as in the present case, a valid petition is pending and when it comes on for hearing the jurisdiction has been raised or the value has fallen so that the estate is then within the limits of a "small estate" it is open to the petitioner to apply to withdraw his petition in order to apply to the Collector for distribution. It is true that the fees already paid would be lost but the Collector's fees are low and there might well be both a substantial saving of money and much greater convenience for the parties. In such a case I think the Court would usually grant leave.

I offered to do so in the present instance but the petitioner preferred to go on with his petition.

There is another point on valuation which has sometimes caused difficulty. The Collector of Estate Duty values the estate as at the date of the death. The Collector of Land Revenue values it as at the date of the petition or application. There may be a long interval during which value may alter greatly. This does not matter. For the purpose of determining the jurisdiction, the Estate Duty valuation is wholly irrelevant. Of course, if the later valuation shewed a big difference it should be checked, lest a serious error had occurred in one or the other.

It follows from what I have said that the first line of section 178 is in conflict with section 179 and with the other provisions of the Chapter. Section 178 means and ought to say: — "All applications for distribution of small estates . . . . ."

A further difficulty to which my attention has been called arises from section 177A which explicitly abolishes the jurisdiction of the Court, except on appeal or case stated. It would seem that the Proviso to section 180 is repealed by necessary implication. This is of considerable practical importance because it means that the Collector of the district where the greater part of the property is situated is the only one who can possibly deal with the case, no matter how inconvenient it may be, and it may be extremely difficult for a Collector to determine where e.g. an insurance policy is situated. The raising of the limit to $5,000 greatly increases the number of cases in which such problems will arise.

Many difficulties spring from the very anomalous and artificial part of the definition which enables a Collector to deal with an insurance policy or bank account for $4,000 but only if the deceased also had half an acre of land, possibly in some other district. The obvious and urgently necessary course is to establish one jurisdiction and one simple procedure for all intestate estates up to $5,000.

*Order accordingly.*

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## HASHIM BIN MAT ISA v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C. J., Taylor and Briggs, JJ.) March 24, 1950]

[F.M. — Criminal Appeal No. 10 of 1950]

*Penal Code, ss. 300 and 302 — Murder — Necessity of proving intention or knowledge — Non-direction by trial Judge — Form of charge — Criminal Procedure Code, ss. 152 and 153 and Second Schedule.*

The appellant in this case was tried and convicted on the following charge: "That you on the 6th day of October 1949 at Batu Kurau, in the State of Perak, did commit murder by intentionally causing the death of one Ariffin bin Din and that you thereby committed an offence punishable under s. 302 of the Penal Code." In his summing-up the learned trial Judge did not direct the assessors regarding the necessity of proving intention or knowledge as required by s. 300 of the Penal Code.

**Held,** (1) that the failure of the trial Judge to give a direction regarding the ingredients of the offence of murder amounted to a non-direction and that the conviction must therefore be quashed; (2) that it is wrong to include the word "intentionally" in a charge of murder and that the proper form of charge is that set out in the second Schedule to the Criminal Procedure Code.